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**Federal Communications Commission
Office of Secretary**

CC Docket No. 02-06
471 Application No. 148729
Funding Request No. 108768
108769

REQUEST FOR REVIEW

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SUMMARY

The Commission should grant review of the Universal Service Administrative Company Administrator's decision denying Connect2 Internet Network Inc.'s ("Connect2") appeal of the "Recovery of Erroneously Disbursed Funds" letter issued to Connect2 by the Schools and Libraries Division ("SLD") concerning equipment and services provided to St. Augustine School for Funding Year 1998. Connect2's participation in the E-Rate Program at numerous schools in New York and New Jersey (including St. Augustine School) already has been the subject of a criminal prosecution by the United States Department of Justice ("DOJ") -- working with USAC and the Commission's Office of Inspector General ("OIG") -- resulting in a plea agreement that provides for a civil forfeiture of \$290,000, which DOJ determined to represent "the amount of proceeds obtained as a result of the offense." Having determined that the claims against Connect2 involved an "indication of fraud, the presentation of a false claim, or a misrepresentation," the Commission was required to, and did, turn these matters over to DOJ for prosecution, and cannot now revisit those claims in the form of the recovery actions at issue here.

In any event, the Commission should exercise its discretion to terminate collection efforts with respect to these claims because: (a) several years have elapsed since Connect2 installed the equipment and services at the school and OIG's auditors have been unable to determine whether the subsequent service provider at the school engaged in "unfair or unethical practices" through a "consultant" who had a clear conflict of interest; (b) the amounts sought by SLD are inconsistent with the findings of the OIG audit; and (c) the amounts sought to be recovered are de minimis in any event. At a minimum, due process requires that Connect2 be afforded an opportunity for hearing under the circumstances presented here.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Request for Review by)	
)	
CONNECT2 INTERNET NETWORK, INC.)	CC Docket No. 02-06
)	471 Application No. 107031
of Decision of Universal Service)	Funding Request Nos. 108768
Administrator)	108769
)	

REQUEST FOR REVIEW

Connect2 Internet Networks, Inc. ("Connect2"), by counsel and pursuant to Sections 54.719 and 54.721 of the Commission's Rules, hereby requests review of the Universal Service Administrative Company Administrator's Decision on Appeal, dated October 13, 2004 ("USAC Decision"), which denied in full Connect2's appeal of the Schools and Libraries Division's "Recovery of Erroneously Disbursed Funds" Letter dated June 7, 2004 ("SLD Letter") concerning the above-captioned Funding Requests for equipment and services provided by Connect2 to St. Augustine School. The SLD Letter seeks recovery of \$8747.70 in funds alleged to have been disbursed erroneously to Connect2 in Funding Year 1998.

The Commission should grant review, reverse the USAC Decision and terminate collection activities with respect to the claims at issue in the SLD Letter and the USAC Decision because: (a) Connect2's involvement in the E-Rate Program at this and numerous schools in New York and New Jersey already has been the subject of a criminal prosecution by the United States Department of Justice ("DOJ") -- with the knowledge, participation and cooperation of USAC and the Commission's Office of Inspector General ("OIG") -- in which a compromise on

these and other claims was reached in the form of a plea agreement and civil forfeiture over 18 months ago; (b) the determination to treat these matters as fraudulent claims by Connect2 required the claims to be transferred to the DOJ, effectively depriving the Commission of jurisdiction over them; (c) Connect2 has been denied due process with respect to the SLD claims; (d) the amounts involved are de minimis in any event and collection will require expenditure of amounts far exceeding the amounts at issue; and (e) the amounts specified in the SLD Letter are inconsistent with the results of an audit of the E-Rate Program at St. Augustine School performed by the OIG earlier this year.

Background

By letter dated June 7, 2004, SLD purported to inform Connect2 that “after a thorough investigation” it had determined that certain amounts had been “erroneously disbursed” to Connect2 for equipment and services provided to St. Augustine School and that “SLD must now recover the amount that was disbursed in error.” SLD Letter at 1.¹ Specifically, SLD claimed that certain unidentified persons had conducted an audit at St. Augustine School at an unspecified time and had determined that “funds were disbursed for T-1 Service, but less functional ISDN service was delivered” to the school by Connect2. SLD Letter at 5. The unnamed auditors also had been “unable to locate 13 pieces of equipment, with an associated pre-discount of cost of \$4,703.” *Id.* The SLD Letter further stated that as a result of these determinations by the auditors, SLD was seeking to recover from Connect2 the sum of \$4,434 with respect to the ISDN service on the basis that those funds were disbursed “in excess of the

¹ Copies of the SLD Letter and the USAC Decision are annexed as Exhibit 1. By separate letter also dated June 7, 2004, SLD demanded recovery of an additional \$16,632.00 from Connect2, claiming that those amounts had been “erroneously disbursed” to Connect2 for equipment and services provided to St. Augustine School for Funding Year 1999 (the “SLD 1999 Letter”). A copy of the SLD 1999 Letter is annexed as Exhibit 2. USAC’s denial of Connect2’s appeal of the SLD 1999 Letter is the subject of a separate “Request for Review” which is being filed contemporaneously with this Request.

actual services delivered” and \$4,313.70 with respect to the missing equipment (90 percent of \$4793).² Id. SLD did not provide Connect2 with the audit report or any other information regarding the audit that formed the basis for the SLD Letter.

The June 7, 2004 SLD Letter was addressed to Mr. John Angelides at Connect2’s office at 26 Bay Street in Staten Island, New York. However, at that point in time SLD and USAC knew or should have known that Connect2’s involvement in the E-Rate Program at this and other schools in New York and New Jersey already had been the subject of a criminal prosecution by the United States Department of Justice (in which USAC had cooperated), resulting in a plea agreement with Mr. Angelides which included a civil forfeiture of \$290,000 representing “the approximate amount of the proceeds obtained as a result of the offense.” On or about December 17, 2002, Mr. Angelides was arrested by agents of the FBI pursuant to an eight-count criminal complaint which alleged, among other things, that: (a) Mr. Angelides, acting on behalf of Connect2, had engaged in a scheme to defraud the E-Rate Program by failing to require schools to pay the non-discounted portion of the cost of equipment and services provided by Connect2; and (b) “the Government actually paid C2I more than \$9 million in E-rate monies for goods and services that C2I provided to approximately 36 schools” in the New York/New Jersey area, the majority of which “purported to participate [in the E-Rate Program] at an 90% discount rate.” See United States of America v. John Angelides, et al., Complaint, sworn to by FBI Special Agent Courtney Foster on December 17, 2002, at ¶¶17-18. A copy of the Complaint is annexed as Exhibit 3.

The Complaint expressly states that USAC provided the FBI and DOJ with “documents and materials” and other information about Connect2’s activities and involvement in

² The \$4,313.70 sought by SLD is the exact amount needed to reduce the amount of “Funds Disbursed to Date: \$48,250.80,” as reported in the SLD Letter, to the amount of the “Funding Commitment: \$43,937.10” reported in that Letter.

the E-Rate Program. See, e.g. Complaint at ¶16 (“I have spoken with an attorney employed by a private, not-for-profit company called the Universal Service Administration Company (“USAC”), and have reviewed documents and materials provided to me by that attorney and her staff”) and ¶18 (“According to USAC records...the Government actually paid C2I more than \$9 million in E-Rate monies for goods and services that C2I provided to approximately 36 schools.”).³ When Mr. Angelides was arrested, all of Connect2’s records regarding its dealings with USAC, the schools (including St. Augustine School) and the E-Rate Program were seized by the FBI and have never been returned.

On May 22, 2003, Mr. Angelides pleaded guilty to Count 1 of the Felony Information against him and admitted to the Forfeiture Allegation in that Information. Among other things, Count 1 of the Information states that “from July 1998 to the present, Connect2 was the vendor of goods and services for more than 200 schools participating in the E-rate Program” and that Mr. Angelides had devised and carried out a “fraudulent scheme” by which Connect2 obtained E-rate funds to provide goods and services to those schools. A copy of the Information is annexed as Exhibit 4. The fraud alleged in the Information consisted of failing to require the schools to pay the non-discounted portion of the cost of goods and services provided by Connect2 and subsequently attempting to cover up that failure. The Forfeiture Allegation of the Information stated that Mr. Angelides was to forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(c) and other provisions “a sum of money equal to approximately \$290,000...representing the amount of proceeds obtained as a result of the offense.” Information at 10-11.

³ In addition to USAC, the OIG also participated actively in the prosecution efforts. See Office of the Inspector General, Semiannual Report to Congress, October 1, 2002 - March 31, 2003 (“2003 OIG Report”) at 7 (discussing audit support provided by OIG auditors for DOJ regarding an “ongoing criminal investigation” involving a service provider that “received more than \$9 million in E-Rate Funds for goods and services provided to approximately 36 schools” between July 1998 and June 2001).

The guilty plea was entered pursuant to a written plea agreement with the United States Department of Justice, acting through the United States Attorney for the Southern District of New York, which stated among other things that “neither the defendant nor Connect2 Internet Networks, Inc. will be further prosecuted criminally by this Office...for participating, from in or about the Fall of 1999 through in or about October 2002, in a scheme to defraud the Federal Government’s E-Rate school and library funding program through the submission of false, fraudulent and misleading claims and statements, as charged in the Information.” A copy of the written plea agreement is annexed as Exhibit 5.

Weeks after he pleaded guilty, Mr. Angelides was diagnosed with Stage IV metastasized non-small cell lung cancer, which has spread to his brain. He is terminally ill and continues to receive treatment at the Memorial Sloan-Kettering Cancer Center. Judge Griesa, who presided over the criminal proceedings, has postponed sentencing based on Mr. Angelides medical condition, with the acquiescence of the U.S. Attorney’s Office. Copies of medical reports and status reports to the court attesting to Mr. Angelides’ medical condition and the postponement of his sentencing are annexed as Exhibit 6.

On December 23, 2003, Mr. Angelides was debarred from the schools and libraries universal service support mechanism for a period of three years. See Notice of Debarment, DA-03-4088, File No. EB-03-IHD-0376, December 23, 2003. The basis for the debarment was the guilty plea entered by Mr. Angelides in the criminal proceedings described above. See Notice of Suspension and Proposed Debarment, DA-03-2707, File No. EB-03-IHD-0376, August 21, 2003. Mr. Angelides did not contest his debarment.

In May of 2004, the Commission’s Office of Inspector General completed a report of its audit of the E-Rate Program at the St. Augustine School. See Report on Audit of the

E-Rate Program at St. Augustine School, Report No. 02-AUD-02-04-017 (May 19, 2004) (“Audit Report”).⁴ That audit apparently was one of approximately 14 audits of E-Rate Program beneficiaries conducted by OIG. See Schools and Libraries Universal Service Support Mechanism, Fifth Report & Order, FCC 04-190, 19 FCC Rcd. 15808 (2004) (“Schools and Libraries Fifth R&O”) at ¶8 and n. 18.3 Those and other audits led the Commission to revise and extend its oversight of, and to supplement the recovery procedures applicable to, the E-Rate Program. Specifically, the Commission acknowledged in August 2004 that it had “not comprehensively addressed the question of what recovery procedures would be appropriate in situations where it is determined that funds have been disbursed in violation of particular programmatic rules that do not implicate statutory requirements,” and concluded that it needed to “refine and extend our recovery procedures.” See Schools and Libraries Fifth R&O, at ¶16. Among other things, the Commission concluded for the first time that “all funds disbursed should be recovered for any funding requests in which the beneficiary failed to pay its non-discounted share.” Id. at ¶24. The Commission also determined that in cases involving equipment and service changes, the “appropriate amount to recover is the difference between what was originally approved for disbursement and what would have been approved had the entity requested and obtained authorization for a service substitution.” Id. at ¶23.

Notwithstanding Mr. Angelides’ guilty plea and the civil forfeiture amount agreed to by DOJ, USAC began sending recovery demand letters to Connect2 in 2004 concerning the same E-Rate Program activities that were encompassed within the criminal prosecution and plea agreement. The SLD Letter at issue here is just one of over 25 demand letters received since

⁴ A copy of the Audit Report is annexed as Exhibit 7. Also included in Exhibit 7 are related memoranda: (a) from the Chief of the Wireline Competition Bureau to the Inspector General dated May 11, 2004 (“Maher Memo”); (b) from the Managing Director to the Inspector General dated May 12, 2004; and (c) from the Inspector General to the Chairman dated May 19, 2004 (“Feaster Memo”). Although the OIG audit apparently forms the basis for the SLD Letters (see USAC Decision at 2), the Audit Report was never served upon or otherwise provided to Connect2.

June 7, 2004 by Connect2, seeking total recoveries of nearly \$5,000,000. Connect2 submitted a letter to USAC on July 20, 2004 appealing the audit findings and recovery demands set forth in the SLD Letters. The USAC Decision denied that appeal in full, concluding that “the Commitment Adjustment Letter was correctly issued.”⁵ USAC Decision at 2. Connect2 respectfully requests the Commission to review the USAC Decision and to cease collection efforts with respect to the SLD Letter.

Argument

I. Connect2’s Involvement In The E-Rate Program Already Was The Subject Of A Prosecution By DOJ And A Plea Agreement.

The SLD Letter and the USAC Decision are part of an administrative process developed by USAC and the Commission to identify and recover, pursuant to the Federal Debt Collection Improvement Act, funds disbursed in violation of Section 254 of the Act. See Schools and Libraries Fifth R&O at ¶15. However, the Commission’s rules expressly state that claims “in regard to which there is an indication of fraud, the presentation of a false claim, or a misrepresentation on the part of the debtor...shall be referred to the Department of Justice (“DOJ”) as only the DOJ has authority to compromise, suspend or terminate collection action on such claims.” See 47 C.F.R. §1.1902(c) (emphasis added). In this case, DOJ already has investigated and prosecuted claims of fraud against Mr. Angelides which included the activities that are the subject of the SLD Letter. See Complaint at ¶¶16, 18; 2003 OIG Report at 7. In fact, in December 2002 the FBI seized Connect2’s records regarding St. Augustine School in furtherance of that prosecution.

⁵ Connect2 has no record of ever receiving a Commitment Adjustment Letter with respect to the funding requests at issue here. The first correspondence from SLD on these matters apparently was the SLD Letter demanding recovery of \$8,747.70.

DOJ agreed to compromise those claims in May 2003 in return for a guilty plea from Mr. Angelides and an agreement to pay a civil forfeiture in the amount of \$290,000, which DOJ determined to be “the approximate amount of the proceeds obtained as a result of the offense charged in Count One of the Information.” See Felony Information, Exhibit 4 hereto, at 11; Plea Agreement, Exhibit 5 hereto, at 1. Both USAC and the OIG assisted and cooperated in that prosecution, providing DOJ with access to documents, materials, audit services and other information regarding Connect2. In return for the guilty plea and the agreement to pay \$290,000, DOJ agreed that it would not further prosecute Mr. Angelides or Connect2 “for participating, from in or about the Fall 1999 through in or about October 2002, in a scheme to defraud the Federal Government’s E-Rate school and library funding program through the submission of false, fraudulent and misleading claims and statements....” Plea Agreement at 2. Given the mandatory referral language of §1.1902(c) of the Commission’s Rules, the direct involvement of USAC and OIG with DOJ in bringing the complaint, and the compromise already effected by DOJ in the plea agreement, USAC and the Commission cannot now revisit the terms of the compromise with DOJ by seeking recovery of additional funds from Connect2.

II. Connect2 Has Been Denied Due Process With Respect To The SLD Claims

SLD’s recovery demands are based on claims that unnamed auditors conducting an audit at Saint Augustine School at an unspecified time were unable to locate certain unspecified equipment and also determined that ISDN service was installed at the school instead of T-1 service. SLD Letter at 5. The SLD Letter indicates that the same unnamed auditors determined that the appropriate value of the missing equipment was \$4,793 and value of the

ISDN service was \$4,434 less than the value of T-1 service. Id.⁶ Connect2 was never afforded an opportunity to review the audit findings or to examine the auditors to determine what information and documents they relied upon to reach their conclusions (or even to determine when they conducted their audit). Likewise, Connect2 was never afforded an opportunity to question other parties as to other possible explanations for the allegedly missing equipment and service variations.⁷ Instead, although the Commission and USAC are well aware of certain intervening events that may account for the discrepancies reportedly found by the auditors, they appear to have prejudged Connect2 to be responsible for those particular discrepancies without the benefit of a hearing or other procedural due process protections.

When OIG conducted its audit of St. Augustine School, it found that the school had changed service providers in Funding Year 2000 “at the recommendation of a consultant that worked for the Archdiocese.” Audit Report, Exhibit 7 hereto, at 7. The auditors subsequently learned that the consultant “was also connected to Elite Systems [the new service provider at St. Augustine], by either family or ownership, while working for the Archdiocese.” Id. at 7-8. The auditors specifically stated that they were “not able to determine if this connection [between the consultant and the new service provider] resulted in unfair or unethical practices on the part of Elite Systems” at the St. Augustine School. Id. at 8. That finding is particularly significant where SLD’s recovery demands against Connect2 are based on missing equipment and service changes discovered by the auditors years after St. Augustine substituted Elite for Connect2 as the service provider.

⁶ The SLD Letter provides no other information about the audit. However, the USAC Decision states that the audit “was conducted by the FCC’s Office of Inspector General (“OIG”) at the St. Augustine School.” USAC Decision at 2.

⁷ Connect2’s own records regarding Saint Augustine School were seized by the FBI on December 18, 2002 and have never been returned.

At a minimum, Connect2 should be afforded a hearing and an opportunity to conduct discovery to explore alternative explanations for the missing equipment and substituted services at the school. SLD not only failed to provide Connect2 with such an opportunity, it never even provided Connect2 with a copy of the Audit Report upon which the SLD Letter is based. Copies of the Feaster Memo and the Audit Report apparently were provided to USAC, the Chief of the Wireline Competition Bureau and the principal of St. Augustine School before the SLD Letter was sent to Connect2, but no copy was provided to Connect2, and Connect2 was never afforded an opportunity to rebut the findings contained in that report. See Feaster Memo, Exhibit 7 hereto, at 2.

Moreover, correspondence among OIG, the Wireline Competition Bureau, the Commission and USAC indicates that USAC and the Wireline Competition Bureau already have prejudged the issue of Connect2's responsibility for the missing equipment and service substitutions, notwithstanding the intervening activities of the school and the obvious conflict of interest with the consultant for the Archdiocese. The Audit Report recommended that "the Wireline Competition Bureau direct the Universal Service Administrative Company (USAC) to recover \$21,600 disbursed on behalf of St. Augustine in funding years 1998 and 1999," a recommendation in which the Wireline Competition Bureau expressly concurred. See Feaster Memo and Maher Memo, copies of which are included in Exhibit 7. The only procedural avenues available currently to Connect2 to contest the SLD Letter require Connect2 to submit appeals and/or requests for review of the SLD Letter to the very same authorities who decided to issue the SLD Letter in the first place. See 47 C.F.R. §§54.719 and 54.722. However, those authorities apparently have prejudged the issue of Connect2's responsibility despite the findings

of the OIG's Audit Report that a subsequent service provider may have been involved in "unfair or unethical practices" at the school.

In addition, all of Connect2's records concerning St. Augustine School (and all of Connect2's other activities involving the E-Rate Program) were seized by the FBI on December 18, 2002 and have never been returned. Thus, Connect2 cannot even determine whether the SLD Letter was timely issued in accordance with the Commission's rules. For more recent funding years, the Commission has established a five-year statute of limitations within which to "carry out any audit or investigation that may lead to the discovery of any violation of the statute or a rule..." See Schools and Libraries Fifth R&O, at ¶32. The limitations period runs from "final delivery of service for a specific funding year." Because SLD never specified the date of its audit(s) and the FBI has never returned any of Connect2's files, Connect2 cannot even determine whether the audit and demand by SLD conformed to applicable limitations periods.

III. The Amounts Involved Are De Minimis In Any Event

The Commission has concluded that "it does not serve the public interest to seek to recover funds associated with statutory or rule violations when the administrative costs of seeking such recovery outweigh the dollars subject to recovery." Schools and Libraries Fifth R&O at ¶35. With respect to the two funding requests at issue here, the total amount of recovery sought by SLD is less than \$9,000, which clearly is de minimis. See, e.g. 47 C.F.R. §54.708 (de minimis exemption for annual Universal Service Fund contribution amounts of less than \$10,000). There is no question that the administrative costs of pursuing to their ultimate conclusion the recovery efforts on these two funding requests will exceed \$9,000. The Commission has directed USAC "not to seek recovery of such de minimis amounts" under these

circumstances and it should exercise its discretion to terminate collection activity with respect to these two matters. See 47 C.F.R. §1.1916; Schools and Libraries Fifth R&O at ¶35.

IV. The Amounts Sought By SLD Are Inconsistent With The Findings Of The OIG Audit

According to the Audit Report of the E-Rate Program at St. Augustine School, the objective of the audit “was to assess the beneficiary’s compliance with the rules and requirements of the USF program.” See Feaster Memo at 1 (emphasis added). Aside from the fact that SLD’s reliance upon the OIG audit of St. Augustine School as the basis for its recovery demand letter issued to Connect2 is inconsistent with the express purposes of the audit, the amounts sought by SLD from Connect2 are inconsistent with the Audit Report.

The Audit Report identified “potential fund recoveries” totaling \$21,600 for funding Years 1998 and 1999 and recommended “that the Wireline Competition Bureau direct the Universal Service Administration Company (USAC) to recover \$21,600 disbursed on behalf of St. Augustine in FYs 1998 and 1999.” See Feaster Memo at 1. Nevertheless, the SLD Letter (and the companion SLD 1999 Letter) seek a total recovery of \$25,379.70 from Connect2 for FY 1998 and 1999 at St. Augustine. Among other things, the Audit Report concluded that Connect2 was overpaid by \$17,286 during FY 1998 and FY 1999 based its finding that ISDN service had been installed at the school rather than T-1 service. However, SLD apparently is seeking to recover from Connect2 of a total of \$20,945.70 for 1998 (\$4,313.70) and 1999 (\$16,632.00) based on the ISDN/T-1 discrepancy. Likewise, the SLD Letter seeks recovery of \$4,434 from Connect2 based on missing or substituted equipment at St. Augustine, but the Audit Report states that except for the “level of internet service,” the auditors were unable “to determine if the substituted equipment resulted in a less functional system.” Audit Report at 6. Even the commitment and disbursement amounts reported in the SLD Letters for 1998 and 1999 differ

from the amounts in the OIG Audit Report. (Compare SLD Letter at 5 with Audit Report at 5). There is no explanation of these discrepancies anywhere in the SLD Letter, just a summary demand for payment by Connect2.


Conclusion

For the reasons set forth above, Connect2 respectfully requests the Commission to grant review of the USAC Decision denying its appeal of the SLD Letter and to terminate collection activity with respect to the two above-referenced funding requests. If the Commission decides to pursue collection despite the de minimis amounts involved, Connect2 respectfully requests an opportunity to examine under oath the auditors whose investigation forms the basis for the SLD demands and other third parties, including the consultant for the Archdiocese referenced in the Audit Report. Connect2 further requests the opportunity to examine the relevant records seized by the FBI from Connect2 which have never been returned to Connect2 so that it might prepare a defense to the SLD demands.

Date: December 13, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE


I hereby certify that on December 13, 2004, a copy of the foregoing "Request for Review" and certificate of service was sent via First Class Mail, postage prepaid, to:

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Timothy J. Fitzgibbon



Universal Service Administrative Company
Schools & Libraries Division

EFB
Chro

Administrator's Decision on Appeal - Funding Year 1998-1999

October 13, 2004

Mark S. Cohen
Cohen & Gresser LLP
666 Fifth Avenue, 26th Floor
New York, NY 10103

RECEIVED

OCT 18 2004

COHEN & GRESSER LLP

Re: St. Augustine School

Re: Billed Entity Number: 10499
471 Application Number: 107031
Funding Request Number(s): 108768, 108769
Your Correspondence Dated: July 20, 2004

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Funding Year 1998 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your letter of appeal included more than one Application Number, please note that for each application for which an appeal is submitted, a separate letter is sent.

Funding Request Number: 108768
Decision on Appeal: **Denied in full**
Explanation:

- You are appealing on behalf of Connect2 Internet Networks Inc. On appeal you are address multiple Commitment Adjustment Letters to multiple entities. You assert the reason for repayment requests vary by entity. You also affirm that Mr. Angelides of Connect2 pleaded guilty on May 22, 2003 to 18 U.S.C. §371, during which he agreed to forfeit \$290,000, not the millions referenced in the letters. In light of the criminal prosecution of Mr. Angelides, his illness, and attendant business problems, Connect2 has not transacted any business since 2003 when it closed its office. The funds received by Connect2 from the SLD, which SLD now wants repaid, went largely to the purchase and installation of computer equipment in the serviced schools and to pay the Company's employees, vendors and other overhead; therefore, in light of the aforementioned circumstances, the proceedings are unwarranted.

- Upon review of the appeal letter and the relevant supporting documentation, it has been determined by the SLD that the Commitment Adjustment Letter was correctly issued. The audit conducted by the Office of Inspector General (OIG) at the St. Augustine School showed that the funds were disbursed to Connect2 for T-1 Service for Internet Access service, but less functional ISDN service was delivered, which resulted in the SLD disbursing funds in excess of the actual services delivered. These findings are in violation of the rules of the Schools and Libraries Support Mechanism. Accordingly, the SLD must seek recovery of \$4,434.00. Your appeal has not brought forward persuasive information that the SLD's decision to rescind the commitment for the St. Augustine School was incorrect.
- On the FCC form 473 (Service Provider Certification Form), the service provider certifies that charges reflected on the FCC Form 474 (Service Provider Invoice Form) will be based on bills or invoices billed to the beneficiary. Moreover, instructions to the Form 474 require that the service provider has to provide the products and services and to bill the school or library for the non-discounted portion prior to submitting a FCC Form 473 to USAC/SLD. In addition, the FCC Rules in Sec. 54.507(b) states that a funding year for purposes of the schools and libraries cap shall be the period July 1 through June 30; Section 54.70(e) states that if schools and libraries enter into long term contracts for eligible services, the Administrator (USAC/SLD) shall only commit funds to cover the pro-rated portion of such long term contract scheduled to be delivered during the funding year for which universal service support is sought. Connect2 over-billed SLD for the ISDN services based on T-1 services for Internet Access for FY 1998 and FY 1999 and was not in compliance with program rules and regulations. Consequently, your appeal is denied.

Funding Request Number: 108769
Decision on Appeal: **Denied in full**
Explanation:

- Upon review of the appeal letter and the relevant supporting documentation, it has been determined by the SLD that the Commitment Adjustment Letter was correctly issued. The audit conducted by the OIG at the St. Augustine School determined that some E-rate equipment could not be found and some of the equipment installed was significantly different from the equipment listed on the approved FCC Form 471 (Services Ordered and Certification Form), item 17 attachment. SLD approved, committed, and disbursed funds to Connect2 based on the approved FCC Form 471 funding request numbers. The physical inventory at St. Augustine revealed that thirteen (13) equipment units, consisting primarily of hubs, were missing and some equipment installed was different from the equipment listed on the approved FCC Form 471. These findings are in violation of the rules of the Schools and Libraries Support Mechanism. Accordingly, the SLD must seek recovery of \$4,314.00. Your appeal has not brought forward

persuasive information that the SLD's decision to rescind the commitment for the St. Augustine School was incorrect.

- On the FCC form 473 (Service Provider Certification Form), the service provider certifies that charges reflected on the FCC Form 474 (Service Provider Invoice Form) will be based on bills or invoices billed to the beneficiary. Moreover, instructions to the Form 474 require that the service provider has to provide the products and services and to bill the school or library for the non-discounted portion prior to submitting a FCC Form 473 to USAC/SLD. Because the amounts invoiced by Connect2 on the FCC Form 474 were submitted as line items in the aggregate by funding request numbers (FRNs) without any breakdown by unit/price, the SLD had no knowledge of any product substitutions and relied on the original service/equipment list attached to Item 17 of the FCC Form 471. Consequently, the SLD approved the disbursement to the extent the E-rate funds requested did not exceed the approved committed FRN amounts. The SLD has no record of these substitutions, and therefore, issued no letters authorizing these substitutions. Consequently, your appeal is denied.

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the Federal Communications Commission (FCC). For appeals that have been denied in full, partially approved, dismissed, or cancelled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience, and cooperation during the appeal process.

Schools and Libraries Division
Universal Service Administrative Company

cc: John Dotson
St. Augustine School
1176 Franklin Avenue
Bronx, NY 10456

Connect2 Internet Networks Inc.
26 Bay Street
Staten Island, NY 10301 2145



Universal Service Administrative Company
Schools & Libraries Division

RECOVERY OF ERRONEOUSLY DISBURSED FUNDS

June 7, 2004

John Angelides
Connect2 Internet Networks Inc.
26 Bay Street
Staten Island, NY 10301 2145

Re:

Funding Year 1998 -1999
Form 471 Application Number: 107031
Applicant Name ST AUGUSTINE SCHOOL
Contact Person: JOHN DOTSON
Contact Phone: 718-601-1436

Dear Service Provider Contact:

Reviews of Schools and Libraries Program disbursements occasionally reveal that funds were disbursed in error. Such discoveries may arise out of our periodic audits, attempts by applicants to reduce a funding commitment below the amount already disbursed, or other investigations resulting from our program compliance procedures. For example, funds may be disbursed in error when:

- Services were billed but were not delivered
- Services were billed in excess of the services delivered
- Services were returned but an appropriate refund to SLD was not made

The SLD has determined that the funds detailed on the attached FUNDING DISBURSEMENT SYNOPSIS were disbursed in error. This synopsis includes the specific funding requests, amounts, and reasons for recovery by Funding Request Number (FRN). The SLD must now recover the amount that was disbursed in error.

FUNDING DISBURSEMENT SYNOPSIS

On the pages following this letter, we have provided a Funding Disbursement Synopsis for the Form 471 application cited above. The enclosed report includes a list of the FRNs from this application for which recovery of erroneously disbursed funds is necessary.

Immediately preceding the Funding Disbursement Report, you will find a guide that defines each line of the Report. The SLD is also sending this information to the applicant named above.

TO APPEAL THIS DECISION

If you wish to appeal the decision indicated in this letter, your appeal must be **RECEIVED BY THE SCHOOLS AND LIBRARIES DIVISION (SLD) WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER**. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and e-mail address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify which Recovery Of Erroneously Disbursed Funds you are appealing. Indicate the funding request number and date of the Disbursed Funds Recovery letter. Your letter of appeal must also include the applicant name, the Form 471 Application Number, and the Billed Entity Number from the top of your letter.
3. When explaining your appeal, include the precise language or text that is at the heart of your appeal. By pointing us to the exact words that give rise to your appeal, the SLD will be able to more readily understand and respond appropriately to your appeal. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep copies of your correspondence and documentation.
4. Provide an authorized signature on your letter of appeal.

If you are submitting your appeal on paper, please send your appeal to: Letter of Appeal, Schools and Libraries Division, Box 125 - Correspondence Unit, 80 South Jefferson Road, Whippany, NJ 07981. Additional options for filing an appeal can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the Client Service Bureau. We encourage the use of either the e-mail or fax filing options to expedite filing your appeal.

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the Federal Communications Commission (FCC). You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be **RECEIVED BY THE FCC WITHIN 60 DAYS OF THE ABOVE DATE ON THIS LETTER**. Failure to meet this requirement will result in automatic dismissal of your appeal. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by calling the

Client Service Bureau. We strongly recommend that you use either the e-mail or fax filing options because of substantial delays in mail delivery to the FCC. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

Schools and Libraries Division
Universal Service Administrative Company